HD TANDEM
David Erickson, President
4300 E. Pacific Coast Highway
Long Beach, CA 90084

September 20, 2019

VIA ECFS **Notice of Ex Parte**

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

Dear Secretary Dortch:

Pursuant to Section 1.1206 of the Commission Rules, the following reports on contacts made with the Commission staff on Thursday September 19, 2019. The undersigned and Kathryn Glaser of HD Tandem, along with Megan Delany of Delany Advisory Group met separately with Nirali Patel, Wireline Advisor to Chairmain Pai, Arielle Roth, Wireline Legal Advisor to Commissioner O'Rielly Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety to Commissioner Rosenworcel, and Joseph Calascione, Legal Advisor to Commissioner Carr, via telephone conference regarding the above-referenced proceeding.

HD Tandem stressed that mitigating transport mileage is the critical factor for leveling the playing field and eliminating existing market distortions. HD Tandem representatives explained that utilizing traffic ratio triggers alone will only skew the incentives more radically in favor of local exchange carrier arrangements that have both high mileage **and** a consistent traffic ratio below the designated thresholds (3:1, 6:1 or 10:1). Such arrangements exist presently and will be further exacerbated as LECs actively seek to navigate the new triggers in order to preserve high mileage charges.

HD Tandem further explained that moving the traffic ratio trigger from 3:1 to 6:1 to 10:1 does nothing but change the number of companies that are positioned to take advantage of disproportionate subsidies (via high-mileage access) for both "free" and "paid" services. 6:1 would leave a smaller percentage of LECs capable of billing high-mileage intercarrier compensation to subsidize both types of services, while a 10:1 merely would allow a greater number of LECs who are capable of using high-mileage intercarrier compensation to subsidize the services. Either way, the end result of the Commission's new rules will be a class of carriers that are afforded the benefit of supporting any high-volume service, regardless of the fee charged to the consumer, and preserving these carriers' ability to charge IXCs high transport fees. The

HD Tandem representatives noted that this result cannot be the Commission's intent or the outcome it is seeking in its proposed Order.

Furthermore, the HD Tandem representatives stated that there is no direct link between the ratio of traffic imbalance and the opportunity for LECs to subsidize free and paid services with high-mileage intercarrier compensation. The record in this proceeding strongly supports this conclusion as several carriers, who previously haven't been deemed access stimulators, have expressed concern about being wrongly considered so under the Commission's proposed new triggers.

The HD Tandem representatives stated that, as early as the CAF Order, the Commission has recognized, as the heart of the policy problem, that rate disparities are driven by mileage disparities, which a traffic ratio trigger alone fails to address.. The ratio trigger by itself does nothing but "catch" imbalance of inbound to outbound traffic, while providing substantial financial incentives to avoid the traffic ratio trigger. The HD Tandem representatives opined that, based on the record in this proceeding, very few of the parties truly understand to whom the traffic ratio alone will "catch" – it may take years to find out as IXCs utilize the ambiguity inherent in the traffic ratios.

However, HD Tandem said that one thing that is clear is that the ratios will separate LECs into two groups, those who can take advantage of high access rates based solely on their traffic ratio and those who cannot. Accordingly, traffic will shift from those who tripped the ratio, to those who did not. Furthermore, these shifts of traffic will be continuous, as LECs come in and out of compliance with the trigger. HD Tandem cautioned that this traffic shift is roughly an 8-billion-minute issue (according to ATT cite). A mileage trigger, in contrast, solves this on-going problem.

The HD Tandem representatives concluded that a clear mileage trigger would create an effective safe harbor for companies that want to avoid disputes, simply by reducing mileage to a level below the Commission's trigger thereby eliminating the access arbitrage caused by the mileage-driven rate disparities and motivating the industry to eliminate the only remaining source of arbitrage: price.

Respectfully Submitted,

/s/ David Erickson
David Erickson
President

Cc:

Joseph Calascione
Travis Litman
Nirali Patel
Arielle Roth